U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22740185

Date: SEP. 29, 2022

Appeal of Texas Service Center Decision

Form I-129, Petition for L-1A Manager or Executive

The Petitioner, an importer and distributor of diamonds, seeks to temporarily employ the Beneficiary as its president under the L-1A nonimmigrant classification for intracompany transferees who are coming to be employed in the United States in a managerial or executive capacity. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Director of the Texas Service Center denied the petition concluding that the record did not establish, as required, that the Beneficiary was employed abroad, or would be employed in the United States, in a managerial or executive capacity.

In these proceedings, it is the petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary "in a capacity that is managerial, executive, or involves specialized knowledge," for one continuous year within three years preceding the beneficiary's application for admission into the United States. Section 101(a)(15)(L) of the Act. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id*. The petitioner must also establish that the beneficiary's prior education, training, and employment qualify him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

II. ANALYSIS

The issues before us on appeal are whether the Petitioner has established that: (1) the Beneficiary was employed abroad in a managerial or executive capacity; and (2) the Beneficiary would be employed in the United States in a managerial or executive capacity.

A. Employment Abroad in a Managerial Capacity

The record reflects that the Petitioner's foreign parent company employed the Beneficiary in the position of Export Executive for more than one continuous year in the three-year period preceding the filing of the petition. The Petitioner has consistently asserted that the Beneficiary was employed abroad in a managerial capacity as defined at section 101(a)(44)(A) of the Act.

The Petitioner submitted a letter from the foreign entity which explained the nature of its business, described the Beneficiary's duties as Export Executive and the percentage of time he allocated to each delineated task, and provided position descriptions for the Beneficiary's direct subordinates. The Petitioner also provided an organizational chart illustrating the management structure of its parent company which shows that the Beneficiary reported to two of the company's partners, and directly managed a sales team and four subordinate supervisors who each supervised their own subordinate staff. This evidence indicates that the Beneficiary oversaw an export division with more than 70 employees.

Upon *de novo* review, we conclude that the Petitioner established by a preponderance of the evidence that the Beneficiary has been employed abroad in a managerial capacity. The record establishes that he more likely than not performed the higher-level functions described at section 101(a)(44)(A)(i)-(iv) of the Act and that the division or department he managed had sufficient staff to relieve him from significant involvement in the day-to-day activities of the company's export activities, such that he was able to allocate his time primarily to managerial duties. Accordingly, we will withdraw the Director's determination with respect to the Beneficiary's prior employment abroad.

B. U.S. Employment in an Executive Capacity

The remaining issue is whether the Petitioner established that the Beneficiary would be employed in the United States in an executive capacity as defined at 8 C.F.R. § 101(a)(44)(B) of the Act. The Petitioner does not claim that the Beneficiary will be employed in the United States in a managerial capacity.

To establish the Beneficiary's eligibility for L-1A nonimmigrant visa classification as an executive, the Petitioner must show that he will perform the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(B)(i)-(iv) of the Act. If the Petitioner establishes that the offered position meets all elements set forth in the statutory definition, the Petitioner must also prove that the Beneficiary will be *primarily* engaged in executive duties, as opposed to ordinary operational activities alongside the Petitioner's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006). In determining whether a given beneficiary's duties will be primarily executive, USCIS will consider the petitioner's description of the job duties, the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

Here, the Director's decision does not reflect consideration of all these factors in evaluating whether the Beneficiary's offered position as the Petitioner's president would be in an executive capacity. Rather, the Director's analysis of this eligibility requirement was limited to a summary of the

Beneficiary's job description and an observation that the Petitioner "did not provide any documentary evidence of the duties being performed." The Director concluded that "the documentary evidence provided demonstrates that the beneficiary appears to be performing tasks that are non-qualifying and could be handled by subordinate employees."

The record reflects that the Beneficiary in this matter was previously the beneficiary of an approved new office petition, the validity of which ended in April 2020.[1] The "documentary evidence" the Director referenced consisted of the Petitioner's lease, contracts, emails, and other business documentation dated during the validity of that new office petition. When a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). While it is likely that the Beneficiary performed non-executive tasks during the validity of the approved new office petition, he has since left the United States. The current petition is a request for new L-1A employment and should not be adjudicated based on an assessment of the Beneficiary's previous activities during the Petitioner's start-up phase in 2019 or early 2020. Instead, the Petitioner must establish that it met all eligibility requirements for this classification when it filed this petition in November 2020.

Further, the Director's decision does not otherwise include an analysis of the Beneficiary's stated job duties nor does it indicate that he considered other relevant evidence submitted in support of the petition, including evidence of wages paid to employees in 2020, the Petitioner's organizational chart and position descriptions for the Beneficiary's proposed subordinates, the nature of the business, and the Petitioner's claims that the U.S. company receives considerable operational support from employees of its parent company. The record also contains a lengthy expert opinion letter from a professor at the University of [redacted] that addresses the Beneficiary's proposed employment and this evidence is not mentioned in the Director's decision.

An officer must fully explain the reasons for denying a visa petition in order to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Here, the Director's decision was deficient for the reasons discussed above and did not provide sufficient explanation of the reasons for the denial. Accordingly, we will withdraw the Director's determination with respect to this issue.

However, we cannot sustain the appeal based on the record as presently constituted. Accordingly, the matter will be remanded to the Director for further review and entry of a new decision.

Although the Director issued a request for evidence (RFE) prior to issuing the unfavorable decision, the RFE did not provide the Petitioner with sufficient notice of deficiencies in the record. The Petitioner submitted a position description for the U.S. role that paraphrases the definition of

[1] The term "new office" refers to an organization which has been doing business in the United States for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a "new office" operation no more than one year within the date of approval of the petition to support an executive or managerial position.

"executive capacity" rather than providing a detailed description of the types of duties the Beneficiary would perform within the context of the Petitioner's business, or examples of such duties. For example, the Petitioner generally stated that the Beneficiary would be responsible for "directing the management of the organization," "establishing the long-term and short-term . . . strategic goals for the company," and "overseeing the implementation of the company's goals and policies" while holding "wide latitude of discretionary authority." These broad responsibilities, which account for more than half of the Beneficiary's time, do not provide sufficient information regarding his proposed tasks. Conclusory assertions regarding the Beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the Petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Assocs., Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

The Petitioner also indicated that the Beneficiary would allocate 25% of his time to developing personnel and recruitment policies and hiring employees. The Petitioner did not identify any vacancies or future positions on its organizational chart and has not articulated any hiring plans beyond stating that "additional employees will be hired as needed." As such, the record does not establish how these tasks would require a significant portion of the Beneficiary's time on an ongoing basis. As the matter will be remanded, the Director shall issue a new RFE to advise the Petitioner of these deficiencies and allow it an opportunity to respond before entering a new decision.

Further, the Petitioner did not submit evidence to corroborate its claimed U.S.-based staffing levels at the time of filing in November 2020, as the most recent state quarterly wage reports and quarterly federal tax returns provided were for the third quarter of 2020. On remand, Director is instructed to request evidence of the Petitioner's staffing from the date of filing to the present time. The Petitioner must establish that all eligibility requirements for the benefit sought have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

In addition, when staffing levels are considered in determining whether an individual will act as a manager, USCIS must also take into account relevant evidence in the record concerning the reasonable needs of the organization as a whole, including any related entities within the "qualifying organization," giving consideration to the organization's overall purpose and stage of development. *See* section 101(a)(44)(C) of the Act. *See Matter of Z-A-*, Inc., Adopted Decision 2016-02 (AAO Apr. 14, 2016). If a petitioner claims that a beneficiary's managerial or executive role is dependent on other staff or entities within the larger qualifying organization, it bears the burden of submitting probative evidence to support such claims.

Here, the Petitioner asserts that it significantly relies on support from staff employed by its parent company but has not sufficiently documented the foreign entity's employment of these staff, described the services they provide, or explained how they interact or work with the U.S. personnel or U.S.-based clientele. The Petitioner's general claims that that its parent company provides operational and administrative support to the U.S. subsidiary should be corroborated with evidence explaining and documenting the nature and scope of this support and the specific functions performed by the foreign entity's personnel. As the Director has not yet addressed these claims, he should allow the Petitioner

an opportunity to submit additional evidence regarding the functions performed by the foreign entity and its staff prior to issuing a new decision.

III. CONCLUSION

For the reasons discussed above, the Director's decision is withdrawn and the matter is remanded to the Director. On remand, the Director should allow the Petitioner an opportunity to submit additional evidence before issuing a new decision. The Director may also request evidence of the Petitioner's ongoing business operations and any other evidence relevant to its eligibility for the requested classification.

ORDER: The decision of the Director is withdrawn. The matter is remanded for entry of a new decision consistent with the foregoing analysis.